

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	File No.: EB-SED-12-00005291
)	
VTech Electronics Limited)	Acct. No.: 201432100016
)	
)	FRN: 0022114102
)	

ORDER

Adopted: May 12, 2014**Released: May 12, 2014**

By the Deputy Chief, Enforcement Bureau:

1. The Enforcement Bureau (Bureau) of the Federal Communications Commission (Commission) has resolved its investigation into whether VTech Electronics Limited (VTech) unlawfully marketed its Wi-Fi Learning App Tablet, the InnoTab 2S, prior to obtaining the required FCC authorization. The Commission's rules require that manufacturers or importers of electronics equipment first obtain FCC authorization before marketing or selling such equipment in order to prevent the potential for harmful interference to other lawful radio or electronic devices. In response to the Bureau's investigation, VTech admitted that it marketed the device before the Commission had certified that the InnoTab 2S met the applicable requirements. To resolve the investigation, VTech will pay \$19,000 and implement a three-year plan to ensure future compliance with these important requirements.

2. In this Order, we adopt the attached Consent Decree entered into between the Bureau and VTech. The Consent Decree resolves and terminates the Bureau's investigation into VTech's compliance with the marketing rules set forth in Section 302(b) of the Communications Act of 1934, as amended (Act),¹ and Sections 2.803 and 2.1204 of the Commission's rules (Rules).²

3. The Bureau and VTech have negotiated the Consent Decree that resolves this matter. A copy of the Consent Decree is attached hereto and incorporated herein by reference.

4. After reviewing the terms of the Consent Decree and evaluating the facts before us, we find that the public interest would be served by adopting the Consent Decree and terminating the investigation.

5. In the absence of material new evidence relating to this matter, we conclude that our investigation raises no substantial or material questions of fact as to whether VTech possesses the basic qualifications, including those related to character, to hold or obtain any Commission license or authorization.

¹ 47 U.S.C. § 302a(b).

² 47 C.F.R. §§ 2.803, 2.1204.

6. Accordingly, **IT IS ORDERED** that, pursuant to Sections 4(i), 4(j), and 503(b) of the Act,³ and Sections 0.111 and 0.311 of the Rules,⁴ the Consent Decree attached to this Order **IS ADOPTED**.

7. **IT IS FURTHER ORDERED** that the above-captioned investigation **IS TERMINATED**.

8. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by first class mail and certified mail, return receipt requested, to King Fai Pang, Director, VTech Electronics Limited, 23/F, Tai Ping Industrial Centre, Block 1, 57 Ting Kok Road, Tai Po, Hong Kong, and to David E. Hilliard, Esq., Wiley Rein LLP, Counsel for VTech Electronics Limited, 1776 K Street, N.W., Washington DC 20006.

FEDERAL COMMUNICATIONS COMMISSION

David Kolker
Deputy Chief, Enforcement Bureau

³ 47 U.S.C. §§ 154(i), 154(j), 503(b).

⁴ 47 C.F.R. §§ 0.111, 0.311.

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CONSENT DECREE

The Enforcement Bureau of the Federal Communications Commission and VTech Electronics Limited, by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Enforcement Bureau's investigation into possible violations of Section 302(b) of the Communications Act of 1934, as amended,¹ and Sections 2.803 and 2.1204 of the Commission's rules² pertaining to the marketing in the United States of its Wi-Fi Learning App Tablet, InnoTab 2S (InnoTab 2S).

I. DEFINITIONS

1. For the purposes of this Consent Decree, the following definitions shall apply:
 - (a) "Act" means the Communications Act of 1934, as amended, 47 U.S.C. § 151 *et seq.*
 - (b) "Adopting Order" means an order of the Bureau adopting the terms of this Consent Decree without change, addition, deletion, or modification.
 - (c) "Bureau" means the Enforcement Bureau of the Federal Communications Commission.
 - (d) "Commission" and "FCC" mean the Federal Communications Commission and all of its bureaus and offices.
 - (e) "Communications Laws" means, collectively, the Act, the Rules, and the published and promulgated orders and decisions of the Commission to which VTech is subject by virtue of its business activities, including but not limited to, the Equipment Marketing Rules.
 - (f) "Compliance Plan" means the compliance obligations, program, and procedures described in this Consent Decree at paragraph 9.
 - (g) "Covered Employees" means all employees and agents of VTech who perform, or supervise, oversee, or manage the performance of, duties that relate to VTech's responsibilities under the Equipment Marketing Rules, but excludes those employees or agents of VTech who perform factory labor associated with the

¹ 47 U.S.C. § 302a(b).

² 47 C.F.R. §§ 2.803, 2.1204.

manufacture and assembly of radio frequency devices, those solely involved in the sales and marketing of radio frequency devices for distribution outside the United States and its territories, and those agents, if any, who perform independent testing of VTech's radio frequency devices.

- (h) "Effective Date" means the date on which the Bureau releases the Adopting Order.
- (i) "Equipment Marketing Rules" means Section 302(b) of the Act;³ Sections 2.803 and 2.1204 of the Rules;⁴ and other Communications Laws governing the marketing of radio frequency devices within the United States and its territories.
- (j) "Investigation" means the investigation commenced by the Bureau's June 6, 2013 Letter of Inquiry⁵ regarding whether the marketing of the InnoTab 2S by VTech complied with the Equipment Marketing Rules.
- (k) "Operating Procedures" means the standard, internal operating procedures and compliance policies established by VTech to implement the Compliance Plan.
- (l) "Parties" means VTech and the Bureau, each of which is a "Party."
- (m) "Rules" means the Commission's regulations found in Title 47 of the Code of Federal Regulations.
- (n) "VTech" means VTech Electronics Limited and its predecessors-in-interest and successors-in-interest.

II. BACKGROUND

2. VTech manufactures and markets electronic learning products, including the InnoTab 2S computer tablet. Pursuant to Section 302(b) of the Act⁶ and Sections 2.803 and 15.201(b) of the Rules,⁷ an intentional radiator,⁸ such as the InnoTab 2S, may not be marketed in the United States unless the device has been properly authorized via the Commission's equipment certification procedures. Section 2.803(a) of the Rules defines "marketing" as the "sale or lease, or offering for sale or lease, including advertising for sale or lease, or importation, shipment, or distribution for the purpose of selling or leasing or offering for sale or lease."⁹ In addition, Section 2.1204 of the Rules prohibits—subject to certain exceptions not relevant here—the importation of a radio frequency device unless the device has been issued an equipment authorization from the Commission.¹⁰

³ 47 U.S.C. § 302a(b).

⁴ 47 C.F.R. §§ 2.803, 2.1204.

⁵ See Letter from John D. Poutasse, Chief, Spectrum Enforcement Division, FCC Enforcement Bureau, to Mr. Colbert Tang, Senior Manager, VTech Electronics Limited (June 6, 2013) (on file in EB-SED-12-00005291).

⁶ 47 U.S.C. § 302a(b).

⁷ 47 C.F.R. §§ 2.803, 15.201(b).

⁸ Section 15.3(o) of the Rules defines an intentional radiator as "a device that intentionally generates and emits radio frequency energy by radiation or induction." *Id.* § 15.3(o).

⁹ *Id.* § 2.803(a).

¹⁰ *Id.* § 2.1204.

3. In response to a complaint that VTech was marketing the InnoTab 2S in the United States without authorization, the Bureau's Spectrum Enforcement Division (Division) issued a Letter of Inquiry (LOI) to VTech on June 6, 2013.¹¹ The LOI directed VTech to submit a sworn written response to a series of questions relating to its manufacture and marketing of the InnoTab 2S.¹² VTech responded to the LOI on July 8, 2013.¹³ In its LOI Response, VTech stated that it contracted with an approved testing facility to test the InnoTab 2S, and that the testing facility notified VTech on October 10, 2012, that the InnoTab 2S complied with the FCC's Part 15 requirements.¹⁴ VTech acknowledges that the equipment certification for the InnoTab 2S was not issued by the Commission until November 8, 2012, and that VTech had marketed the device prior to issuance of the device's certification.¹⁵ The Bureau and VTech entered into a tolling agreement to toll the statute of limitations.¹⁶

III. TERMS OF AGREEMENT

4. **Adopting Order.** The Parties agree that the provisions of this Consent Decree shall be subject to final approval by the Bureau by incorporation of such provisions by reference in the Adopting Order.

5. **Jurisdiction.** VTech agrees that the Bureau has jurisdiction over it and the matters contained in this Consent Decree and that the Bureau has the authority to enter into and adopt this Consent Decree.

6. **Effective Date; Violations.** The Parties agree that this Consent Decree shall become effective on the Effective Date as defined herein. As of the Effective Date, the Adopting Order and this Consent Decree shall have the same force and effect as any other order of the Commission. Any violation of the Adopting Order or of the terms of this Consent Decree shall constitute a separate violation of a Commission order, entitling the Commission to exercise any rights and remedies attendant to the enforcement of a Commission order.

7. **Termination of Investigation.** In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate the Investigation. In consideration for the termination of the Investigation, VTech agrees to the terms, conditions, and procedures contained herein. The Bureau further agrees that in the absence of new

¹¹ See *supra* note 5.

¹² See *id.*

¹³ See Letter from David E. Hilliard, Counsel for VTech Electronics Limited, to Marlene H. Dortch, Secretary, Federal Communications Commission (July 8, 2013) (on file in EB-SED-12-00005291) (LOI Response).

¹⁴ *Id.* at 2.

¹⁵ *Id.* The Commission's Office of Engineering and Technology (OET) subsequently dismissed VTech's application for equipment certification for the InnoTab 2S because VTech's testing facility did not properly test the device for localized specific absorption rate (SAR), as required by Section 2.1093 of the Rules, 47 C.F.R. § 2.1093. See Letter from Mark Neumann, Chief, Equipment Authorization and Compliance Branch, FCC Office of Engineering and Technology, to VTech Electronics Limited, Attention Colbert Tang (Nov. 15, 2012). SAR is a measure of the rate of energy absorption due to exposure to a radio frequency transmitting source. See *id.* § 2.1093(d). VTech's testing facility subsequently retested the device, which OET found to be satisfactory. On November 20, 2012, the Commission certified the device under FCC ID G2R-1568.

¹⁶ See Tolling Agreement, entered into between John D. Poutasse, Chief, Spectrum Enforcement Division, FCC Enforcement Bureau, and David E. Hilliard, Esq., Wiley Rein LLP, Counsel to VTech Electronics Limited (Sept. 10, 2013) (on file in EB-SED-12-00005291).

material evidence, it will not use the facts developed in this Investigation through the Effective Date, or the existence of this Consent Decree, to institute on its own motion any new proceeding, formal or informal, or take any action on its own motion against VTech concerning the matters that were the subject of the Investigation. The Bureau also agrees that in the absence of new material evidence, it will not use the facts developed in this Investigation through the Effective Date, or the existence of this Consent Decree, to institute on its own motion any proceeding, formal or informal, or take any action on its own motion against VTech with respect to VTech's basic qualifications, including its character qualifications, to be a Commission licensee or to hold Commission licenses or authorizations.

8. **Compliance Officer.** Within thirty (30) calendar days after the Effective Date, VTech shall designate a senior corporate manager with the requisite corporate and organizational authority to serve as Compliance Officer and to discharge the duties set forth below. The person designated as the Compliance Officer shall be responsible for developing, implementing, and administering the Compliance Plan and ensuring that VTech complies with the terms and conditions of the Compliance Plan and this Consent Decree. In addition to general knowledge of the Communications Laws necessary to discharge his/her duties under this Consent Decree, the Compliance Officer shall have specific knowledge of the Equipment Marketing Rules prior to assuming his/her duties.

9. **Compliance Plan.** For purposes of settling the matters set forth herein, VTech agrees that it shall, within sixty (60) calendar days after the Effective Date, develop and implement a Compliance Plan designed to ensure future compliance with the Communications Laws and with the terms and conditions of this Consent Decree. With respect to the Equipment Marketing Rules, VTech shall implement the following procedures:

- (a) **Operating Procedures on Equipment Marketing.** Within sixty (60) calendar days after the Effective Date, VTech shall establish Operating Procedures that all Covered Employees must follow to help ensure VTech's compliance with the Equipment Marketing Rules. VTech's Operating Procedures shall include internal procedures and policies specifically designed to ensure that (i) prior to the initiation of marketing (as such term is defined in Section 2.803(a) of the Rules), all radio frequency devices to be marketed by VTech comply with applicable technical standards, have been properly authorized (via the certification, verification, or declaration of conformity procedures, as applicable), and comply with the applicable administrative requirements relating to equipment labeling and consumer disclosure;¹⁷ and (ii) VTech complies with the requirements of Section 2.1204 of the Rules relating to the conditions under which radio frequency devices may be imported into the United States.¹⁸
- (b) **Compliance Manual.** Within sixty (60) calendar days after the Effective Date, the Compliance Officer shall develop and distribute a Compliance Manual to all Covered Employees. The Compliance Manual shall explain the Equipment Marketing Rules, including the obligations to secure an equipment authorization from the FCC prior to marketing a radio frequency device in the United States and to comply with the requirements of Section 2.1204 of the Rules relating to the conditions under which radio frequency devices may be imported into the United States, and set forth the Operating Procedures that Covered Employees shall follow to help ensure VTech's compliance with the Equipment Marketing Rules. VTech shall periodically review

¹⁷ See 47 C.F.R. § 2.803.

¹⁸ *Id.* § 2.1204.

and revise the Compliance Manual as necessary to ensure that the information set forth therein remains current and complete. VTech shall distribute any revisions to the Compliance Manual promptly to all Covered Employees.

- (c) **Compliance Training Program.** VTech shall establish and implement a Compliance Training Program on compliance with the Equipment Marketing Rules and the Operating Procedures. As part of the Compliance Training Program, Covered Employees shall be advised of VTech's obligation to report any noncompliance with the Equipment Marketing Rules under paragraph 10 of this Consent Decree and shall be instructed on how to disclose noncompliance to the Compliance Officer. All Covered Employees shall be trained pursuant to the Compliance Training Program within sixty (60) calendar days after the Effective Date. Any person who becomes a Covered Employee at any time after the initial Compliance Training Program shall be trained within thirty (30) calendar days after the date such person becomes a Covered Employee. VTech shall repeat the compliance training on an annual basis, and shall periodically review and revise the Compliance Training Program as necessary to ensure that it remains current and complete and to enhance its effectiveness.

10. **Reporting Noncompliance.** VTech shall report any noncompliance with the Equipment Marketing Rules and with the terms and conditions of this Consent Decree within fifteen (15) calendar days after discovery of such noncompliance. Such reports shall include a detailed explanation of (i) each instance of noncompliance; (ii) the steps that VTech has taken or will take to remedy such noncompliance; (iii) the schedule on which such remedial actions will be taken; and (iv) the steps that VTech has taken or will take to prevent the recurrence of any such noncompliance. All reports of noncompliance shall be submitted on paper to the Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, Room 3-C366, 445 12th Street, S.W., Washington, DC 20554, with a copy submitted electronically to Neal McNeil at Neal.McNeil@fcc.gov and to Ricardo Durham at Ricardo.Durham@fcc.gov.

11. **Compliance Reports.** VTech shall file Compliance Reports with the Commission ninety (90) calendar days after the Effective Date, twelve (12) months after the Effective Date, twenty-four (24) months after the Effective Date, and thirty-six (36) months after the Effective Date.

- (a) Each Compliance Report shall include a detailed description of VTech's efforts during the relevant period to comply with the terms and conditions of this Consent Decree and the Equipment Marketing Rules. In addition, each Compliance Report shall include a certification by the Compliance Officer, as an agent of and on behalf of VTech, stating that the Compliance Officer has personal knowledge that VTech (i) has established and implemented the Compliance Plan; (ii) has utilized the Operating Procedures since the implementation of the Compliance Plan; and (iii) is not aware of any instances of noncompliance with the terms and conditions of this Consent Decree, including the reporting obligations set forth in paragraph 10 hereof.
- (b) The Compliance Officer's certification shall be accompanied by a statement explaining the basis for such certification and must comply with Section 1.16 of the Rules and be subscribed to as true under penalty of perjury in substantially the form set forth therein.¹⁹

¹⁹ See *id.* § 1.16.

- (c) If the Compliance Officer cannot provide the requisite certification, the Compliance Officer, as an agent of and on behalf of VTech, shall provide the Commission with a detailed explanation of the reason(s) why and describe fully (i) each instance of noncompliance; (ii) the steps that VTech has taken or will take to remedy such noncompliance, including the schedule on which proposed remedial actions will be taken; and (iii) the steps that VTech has taken or will take to prevent the recurrence of any such noncompliance, including the schedule on which such preventive action will be taken.
- (d) All Compliance Reports shall be submitted on paper to the Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, Room 3-C366, 445 12th Street, S.W., Washington, DC 20554, with a copy submitted electronically to Neal McNeil at Neal.McNeil@fcc.gov and to Ricardo Durham at Ricardo.Durham@fcc.gov.

12. **Termination Date.** Unless stated otherwise, the requirements set forth in paragraphs 8 through 11 of this Consent Decree shall expire thirty-six (36) months after the Effective Date.

13. **Voluntary Contribution.** VTech agrees that it will make a voluntary contribution to the United States Treasury in the amount of nineteen thousand dollars (\$19,000) within thirty (30) calendar days after the Effective Date. VTech shall send electronic notification of payment to Neal McNeil at Neal.McNeil@fcc.gov, Ricardo Durham at Ricardo.Durham@fcc.gov, and Samantha Peoples at Sam.Peoples@fcc.gov on the date said payment is made. The payment must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account Number and FRN referenced above. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.²⁰ When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters "FORF" in block number 24A (payment type code). Below are additional instructions that VTech should follow based on the form of payment it selects:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

If VTech has questions regarding payment procedures, it should contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

²⁰ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

14. **Waivers.** VTech waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal, or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order, provided the Bureau issues an Adopting Order as defined herein. VTech shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Adopting Order, neither VTech nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and VTech shall waive any statutory right to a trial *de novo*. VTech hereby agrees to waive any claims it may have under the Equal Access to Justice Act²¹ relating to the matters addressed in this Consent Decree.

15. **Invalidity.** In the event that this Consent Decree in its entirety is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

16. **Subsequent Rule or Order.** The Parties agree that if any provision of the Consent Decree conflicts with any subsequent Rule or order adopted by the Commission (except an order specifically intended to revise the terms of this Consent Decree to which VTech does not expressly consent) that provision will be superseded by such Rule or Commission order.

17. **Successors and Assigns.** VTech agrees that the provisions of this Consent Decree shall be binding on its successors, assigns, and transferees.

18. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties with respect to the Investigation. The Parties further agree that this Consent Decree does not constitute either an adjudication on the merits or a factual or legal finding or determination regarding any compliance or noncompliance with the Communications Laws.

19. **Modifications.** This Consent Decree cannot be modified without the advance written consent of both Parties.

20. **Paragraph Headings.** The headings of the paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.

21. **Authorized Representative.** The individual signing this Consent Decree on behalf of VTech represents and warrants that he/she is authorized by VTech to execute this Consent Decree and to bind VTech to the obligations set forth herein. The FCC signatory represents that he is signing this Consent Decree in his official capacity and that he is authorized to execute this Consent Decree.

²¹ See 5 U.S.C. § 504; 47 C.F.R. Part 1, Subpart K.

22. **Counterparts.** This Consent Decree may be signed in any number of counterparts (including by facsimile), each of which, when executed and delivered, shall be an original, and all of which counterparts together shall constitute one and the same fully executed instrument.

John D. Poutasse
Chief, Spectrum Enforcement Division
Enforcement Bureau

Date

King Fai Pang
Director, VTech Electronics Ltd.
VTech Electronics Limited

Date